

## **REMARKS**

The above-identified application is United States application serial number 10/676,541 filed on October 1, 2003. As a result of this amendment, claims 1-11, 14-32, 34-44, 46-56, and 58-66 are pending in the application. Claims 1-11, 14-32, 34-44, 46-56, and 58-66 are rejected. Applicant respectfully traverses these rejections.

### **Rejection of Claims under 35 U.S.C. §112**

Claims 31-43 are rejected under 35 U.S.C. §112 as failing to comply with the written description requirement. In response, Applicant has amended independent claim 31 to pertain to a processing system and to remove "tangible computer-readable medium encoded with". The system is supported by at least paragraphs [0059]-[0079], [0113], and [0138] of the specification.

Independent claim 43 has been amended to remove "tangible computer-readable medium encoded with" and to include "a processor configured to interpret the observing module, inferring module, and determining module". The system is supported by at least paragraphs [0059]-[0079], [0113], and [0138] of the specification.

Claims 44-54 and 56-66 are rejected under 35 U.S.C. 112 as failing to have insufficient antecedent basis for the phrase "computer-readable medium". In response, Applicant has amended claims 44-54 and 56-66 to remove --computer readable medium--.

Removal of the rejection of claims 31-66 under 35 U.S.C. 112 is respectfully requested.

### **Rejection of Claims under 35 U.S.C. §101**

Claims 1-66 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

The rejection states that claim is nonfunctional descriptive material. In response, Applicant refers to the last paragraph of Section 2106.01(l) of the Manual of Patent Examining Procedure (MPEP), which provides:

"When a computer program is claimed in a process where the computer is executing the computer program's instructions, USPTO personnel should treat the claim as a process claim."

Applicant therefore believes that claims 1-30 are statutory process claims.

Applicant has amended claims 31-32 and 34-43 to remove "tangible computer-readable medium encoded with" and to specify a "processing system". Applicant has amended claims 55-56 and 58-66 to recite "an article of manufacture" instead of "computer-readable medium" and to comprise "computer-readable medium encoded with computer interpretable instructions embodied therein...configured to cause a processor to" perform the specified functions. In support, Applicant refers to the second last paragraph of Section 2106.01(I) of the Manual of Patent Examining Procedure (MPEP), which provides:

"Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. ... Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material *per se* and hence nonstatutory."

Applicant accordingly believes that claims 31-32, 34-44, 46-56 and 58-66 recite statutory subject matter. Removal of the rejection of claims 1-11, 14-32, 34-44, 46-56, and 58-66 under 35 U.S.C. 101 is respectfully requested.

*Rejection of Claims under 35 U.S.C. §§102 and 103*

Claims 1, 31, 43, and 55 are rejected under 35 U.S.C. §102(b) as being anticipated by Gleichauf *et al.* (US 6,324,656) and Jancke *et al.* (US 5,764,913). Claims 2-12, 14-30, 32, 34-42, 44, 46-54, 56, and 58-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter *et al.* (US (20030051026) and further in view of Beach (US 6,067,297).

In response, independent claims 1, 31, 43, and 55 have been amended to include the features of respective claims 13, 33, 45, and 57, which were noted as being

allowable if rewritten in independent form including all intervening claims. Claims 12, 13, 33, 45, and 57 have been cancelled. Removal of the rejection of claims 1-11, 14-32, 34-44, 46-56, and 58-66 under 35 U.S.C. §§102 and 103 is respectfully requested.

### **CONCLUSION**

The application, including all remaining claims, is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephone interview, the examiner is requested to telephone the undersigned at (949) 350-7301.

I hereby certify that this correspondence is being electronically transmitted to the USPTO, on the date shown below.

/Mary Jo Bertani/  
(Signature)

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September 11, 2008  
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Respectfully submitted,

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